IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

MFA.No. 79 of 1999(B)

OPMV.2210/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI
.....

APPELLANT/PETITIONER:

THACHUPARAMBAN AKBER ALI,
S/O MOOSA, AGED 32, POST UPPADA,
VIA CHUNGATHARA, MALAPPURAM DIST.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS/RESPONDENTS:

1. THEKKECHERUVIL ANIL KUMAR,
   S/O MAMU T.NANU @ BHASI, MUTHEDAM,
   POST EDAKKARA, MALAPPURAM DIST.
   (DRIVER KLL 1719 BUS) (DELETED)*

2. THORRUPPALI RAYANKUTTY,
   S/O ALAVIKUTTY, POST MELMURI,
   MALAPPURAM DIST (OWNER KLL 1719 BUS).

3. M/S.UNITED INDIA INSURANCE CO. LTD.,
   DIVISIONAL OFFICE, ARAFA BUILDING,
   P.B.NO.5, COURT ROAD, POST MANJERI,
   MALAPPURAM DIST (POLICY NO.101000/31/
   40/11/1406/91).

*Deleted as per order dt. 1.2.07 in MFA 79/99

R3 BY ADV. SRI.PMM.NAJEEB KHAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 79 of 1999

JUDGMENT

Koshy, J.

A young man at the age of 26 years met with a motor accident and he claimed a total compensation of Rs.6,83,000/- contending that the accident occurred due to the negligence of the first respondent driver of the vehicle bearing Reg.No.KLL 1719 owned by the second respondent and insured by the third respondent Insurance Company. The Tribunal found that the accident occurred as alleged, but only a compensation of Rs.1,61,790/- was awarded. Only the quantum of compensation is disputed in this appeal, as the findings regarding negligence, coverage of insurance, liability of the Insurance Company, etc, have become final.

2. The accident occurred on 22.2.1992 at about 10.30 p.m. The injured was aged 26 at the time of the accident. According to the appellant, he was a

photographer, earning an amount of Rs.5,000/- per month. In the absence of data, the Tribunal fixed Rs.2,000/- as the monthly income. We see no ground to interfere in the assessment of monthly income of the appellant. Since he was aged 26, taking guidelines from the second schedule, 18 was taken as the multiplier. Even though it is contended that considering the present life span of an average Indian, the multiplier should be increased, we see no ground to increase the multiplier. Then the question is regarding the compensation granted for disability and for loss of earning capacity. The injuries sustained by the appellant were the following:

> "(1) Dislocation of left leg at hip,
>
> (2) Left ear drum broken and audibility impaired, and
> (3) Head injury occipital bone left."

He was an inpatient for 32 days. He continued his treatment as can be seen from Exhibits A2 to A7

series. He has taken Ayurvedic treatment also, as certified by the Kottakkal Arya Vaidyasala. CT Scans were taken in the Medical College Hospital, Kozhikode. The impression of the first CT Scan was as follows:

> "1. Fracture occipital bone left side.
> 2. Focal contusion left basi frontal lobe."

The second CT Scan report reads as follows:

> "Linear fracture in the squamomastoid part of the left temporal bone with opacification of mastoid air cells left.
>
> Fracture occipital bone left."

2. The contention of the appellant is that as a result of the accident he is unable to move and therefore, there is 100% disability. He was unable to come to the Tribunal to give evidence. The Tribunal referred th matter to the Medical Board.

After considering the medical records and examining the claimant, by Exhibit X1 certificate, the Medical Board, constituted for Physically Handicapped Persons at Kozhikode Medical College Hospital, certified that there is 75% disability. The certificate reads as follows:

> "Akbar Ali is having Post Traumatic Sepviclex - Head Injury RL Hemiplegia, Dysphonia and visual impairment and is physically handicapped. His percentage of permanent/ partial disability is 75%."

The above certificate was issued by a panel of doctors, including Specialists in Orthopaedics, Physical Medicine, Opthalmology and ENT, apart from the Superintendent. The Tribunal did not accept it for the following reasons:

> "The grounds on the strength of which the disability has been assessed to be at 75% are hemiplegia, dysphonia and visual impairment. A reading of the evidence

> adduced by PW1 would show that the petitioner could not come and give evidence in the box as his power of speech has been impaired. There is no case that the petitioner's visual capacity has been adversely affected due to the accident. But, in view of the certificate issued by the Medical College authorities, it is not possible to rule out altogether the visual impairment alleged to have been caused on account of the accident to the petitioner."

Tribunal granted compensation taking only 40% as the disability. Even though the Tribunal found that he was getting Rs.2,000/- per month, only Rs.1,350/- was taken as the monthly income as one third was deducted for personal expenses. One third need be deducted only in the case of death, as the victim need not suffer any personal expenses after the death. But, in the case of injured, who is living, one third cannot be deducted, as he has to incur personal expenses like food, clothing, etc. with the disability. It is also contended

that as the injured was a young man aged 26, future prospects also should have been taken into consideration. In view of 75% disability he is unable to do any work and therefore, compensation should be granted for 100% disability. However, we are of the opinion that compensation need be granted for 75% disability. The Tribunal has taken 18 as the multiplier, taking guidelines from the second schedule. It is submitted that in view of the present life span, a higher multiplier should be taken. We are of the opinion that there is no necessity to take a higher multiplier in view of the three member Bench decision of the Supreme Court in **Smt.Supe Dei v. National Insurance Company Ltd.** (JT 2002 (Suppl.1) SC 451). If that be so, compensation payable will be 2000 x 12 x 18 x 75/100 = 3,24,000/-. The Tribunal granted Rs.1,16,640/- for disability and for functional disability Rs.15,000/- was also granted. So after deducting the same, the balance amount of compensation payable for disability, loss of

earning power and consequential effects will be Rs.1,92,360/-. It is contended that the compensation granted on other heads are too low. Considering the nature of the injuries, he needs continuous treatment including Ayurveda and Alopathy, for future treatment expenses also compensation ought to have been granted. But, considering the total compensation awarded, we are not enhancing the amount on other heads. The additional amount of Rs.1,92,360/- should be deposited by the third respondent Insurance Company with 7% interest from the date of application till its deposit.

The appeal is allowed in part.

(J.B.Koshy, Judge)

20th July, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.79 of 1999

JUDGMENT

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